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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/779,363	02/13/2004	Dave Procknow	018367-9805-00	7900
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MICHAEL BEST & FRIEDRICH LLP			EXAMINER	
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Suite 3300				
MILWAUKEE, WI 53202			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/779,363	PROCKNOW ET AL.
	Examiner James F. Hook	Art Unit 3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 20 July 2007.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 46-53,56-65 and 68-70 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 47 and 59 is/are allowed.
 6) Claim(s) 46, 48-53, 56-58, 60-65 and 68-70 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 46, 48, 50, 53, 56-58, 60, 62, 65, 68, and 69 are rejected under 35 U.S.C. 102(b) as being anticipated by Cousimano. The patent to Cousimano discloses the recited passageway for directing fluid along a path that includes a bend comprising a conduit T having a first and second aperture at each end, and a bend portion adjacent the second aperture, an outer bend surface integrally formed as part of the conduit to at least partially define the second aperture, an insert 10 including at least a portion of an inner bend surface, the insert disposed near the second aperture such that the outer bend surface and the inner bend surface cooperate at least partially to define the bend, the bend has a flange B at the end of the bend, the conduit is a substantially tubular, and cylindrical on both the inner and outer surfaces, and further is circular in cross section, the fluid is an air/fuel mixture in that it is exhaust which routinely has unspent fuel and air, the use of such with coolant in a coolant system of an internal combustion engine or for intake air is merely intended use, the insert and passageway are used with an internal combustion engine, there is also a gasket provided at flange B which is adjacent the bend portion and insert, and where the gasket works in cooperation with the flange and head 16 which retains the insert in a desired position when the flange,

head and gasket are in place. It can be seen that the insert A is formed on the inner part of the curve and all the flow through the bend portion occurs between the outer curved wall and the insert which forms the second component. The sharpest curve of the pipe occurs where reference letter A is located on the drawings (not where the letter is not where the arrow for the letter points), and this location is considered spaced away from the inlet and outlet, and is located on the opposite side of the pipe from the outer bend.

Claims 46, 48, 50, 53, 56-58, 60, 62, 65, and 68-70 are rejected under 35 U.S.C. 102(b) as being anticipated by Reed. The patent to Reed discloses the recited tube configured to attach to an engine housing and guide fluid comprising a first component 1 having a bend portion that is a 90 degree sharp bend, and a second component 6 provided in the bend portion to direct flow through the bend where such is seen to have a curved surface thereby forming a ring shape, where the second component extends beyond the bend, the portion as seen in figure 3 allows all the flow to flow between the far outer curved portion of the bend an the second component blade 7 as shown in figure 3, where the additional blades are considered merely additional structure and when using the term comprising the language of the claim is open ended and the reference can contain more structure and still read upon the claimed subject matter, the flow path is seen to be substantially circular, a flange is provided for connection to an intake passage of an internal combustion engine, and where the entire second component is within the first component.

Claims 46, 48, 49, 57, 58, 60, 61, 69, and 70 are rejected under 35 U.S.C. 102(b) as being anticipated by Jansen. The patent to Jansen discloses a flow guide for a pipe where the use of such for various applications is disclosed and the use of such with an engine housing is considered merely intended use where the pipe of Jansen is capable of use with an engine and such is only set forth in the preamble and fails to breathe life into the body of the claim comprising, a first component 10 in the form of a pipe with a sharp 90 degree turn forming an inner sharp bend and an outer bend, the bend is spaced away from the inlet and outlet of the pipe, a second component 14 having a ring shape with rounded fins which form a curved surface where the second component is seen to be adjacent to the sharp inner bend, where the outer bend surface cooperates to guide all of the fluid flow through the bend portion, the flow path is substantially circular in cross section, and where the second component is completely within the first component.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 51, 52, 63, and 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cousimano, Jansen, or Reed. The patents to Cousimano, Jansen,

and Reed disclose all of the recited structure with the exception of what the insert is made from, specifically polyester thermosetting plastic, and forming the two components of the same material. It is considered an obvious choice of mechanical design to form the inserts of any materials capable for use in the system, including the same material, and the use of thermosetting plastics such as polyester are considered merely a choice of mechanical expedients and it would only require routine experimentation to arrive at optimum materials to use for the insert that would be both inexpensive and capable of use in a specific environment so that they can be replace if necessary as such would only require routine skill in the art to modify the inserts in either Cousimano, Jansen, or Reed to have thermosetting plastic inserts such as polyester inserts as such would be cheaper to replace and will not deteriorate as fast as metals may when exposed to specific environments.

Allowable Subject Matter

Claims 47 and 59 are allowed.

Response to Arguments

Applicant's arguments filed July 20, 2007 have been fully considered but they are not persuasive. With respect to the definition of sharp, such is referring to a prior art invention and not specifically to the instant invention, therefore it is not clear that such a definition would apply to the actual instant invention when such is merely described as being 90 degrees in bend, therefore the pipes set forth in the prior art above teach a 90

degree bend where Cousimano and Jansen set forth a 90 degree turn which is considered sharp when such is a term of relative degree. With respect to the argument directed at the 90 degree angle such is what applicant defines in the specification for the turn as well as in the claims therefore such is considered relevant to the claim language and the teaching of sharp. It is considered relevant that applicant define structure with respect to their invention and define such in the specification with regards to invention if such is to be considered to provide the support for the term, and applicant is attempting to use a term of degree to be defined by an alternate reading based upon a prior art figure when such is also defined for the apparatus in a different manner, therefore it is believed that applicant is attempting to define the limitation contrary to the teachings of the specification with regards to the invention using a definition derived from the prior art figure. Considering what the specification is teaching and the broadest interpretation for the definition of this term, it is considered the definition based upon the prior art figure is more specific and not the broadest interpretation of the definition suggested in combination with the invention of the instant application. With respect to the term "opposite" being added to the claim, such is not considered to recite that the element needs to be directly opposite to the outer curve, especially when such is not the case in applicant's invention as shown in the figures, therefore, opposite will be considered to include any portion of the element opposed to the outer curve in any way, including on the opposite side wall from the outer curved wall, where it is not considered that the application in any way teaches the need to be directly opposite to the outer curve. With respect to the arguments directed at the prior art not showing this

feature with respect to the flow passing the outer bend and the inner bend surfaces at "substantially the same time" is not persuasive when such is more detailed than the claim language which does not require this limitation as argued. These arguments are applicable to all of the prior art arguments due to the fact the same argument is used against every reference. With respect to claim 70 "sharp corner" does not necessitate any specific structure when a corner is not limited to any kind of edge shape as seems to be applicants argument, corners can be rounded and still be considered sharp if such shows a marked change in direction when a corner is known as an angular part or space between meeting lines, edges, or border near the vertex of the angle, where such would be covered by a curved portion as well, where such definitions are set forth in Webster's 9th Collegiate Dictionary.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James F. Hook whose telephone number is (571) 272-4903. The examiner can normally be reached on Monday to Wednesday, work at home Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


James F. Hook
Primary Examiner
Art Unit 3754

JFH